

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT BRUCE MORGAN,

Defendant-Appellant.

UNPUBLISHED

March 6, 2003

No. 237237

Gladwin Circuit Court

LC No. 01-006724-FH

Before: Donofrio, P.J., and Saad and Owens, JJ.

MEMORANDUM.

A jury convicted defendant of one count each of operating a vehicle under the influence of alcohol, third offense, MCL 257.625, and third-degree fleeing and eluding, MCL 257.602a(3). The trial court sentenced defendant to concurrent terms of twenty-four months' probation, with the first seven months to be served in county jail, on each conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court's jury instructions erroneously failed to instruct the jury that the fleeing and eluding conviction required proof of "observable damage." We note, however, that defendant's trial counsel expressly approved the trial court's jury instructions. Accordingly, appellate review of this issue has been waived. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000). Regardless, we note that the statute does not require "observable damage," but merely a "collision." MCL 257.602a(3)(a). Consequently, the jury instructions "fairly presented the issues to be tried and sufficiently protected the defendant's rights." *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

Defendant also contends that the trial court erred in admitting the results of defendant's "breathalyzer" test because the prosecutor failed to establish all the foundational elements. Again, however, we note that defendant's trial counsel expressly approved the admission of the evidence; therefore, this issue was not only forfeited, but also waived. *Carter, supra* at 216; *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). We also note that defendant's conviction for violating MCL 257.625 was based on both "operating a vehicle under the influence of alcohol" and "unlawful bodily alcohol level." Accordingly, even if the test results were improperly admitted, there was an alternate factual basis for establishing defendant's

violation of MCL 257.625. Consequently, defendant failed to establish that his substantial rights were affected, as necessary to avoid forfeiture.¹ *Carines, supra* at 763.

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens

¹ To the extent that defendant's brief references other possible errors, we note that these errors were not listed in defendant's statement of questions presented. As such, we need not address them. *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Regardless, we are not persuaded that there is merit to any of these other "issues."